



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 1491-98
22 February 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Specialty Advisory for Orthopedic Surgery dated 8 December 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

NAVAL HOSPITAL
ORTHOPAEDIC SPECIALTY LEADER
HP01 BOONE ROAD
BREMERTON, WA 98312-1898

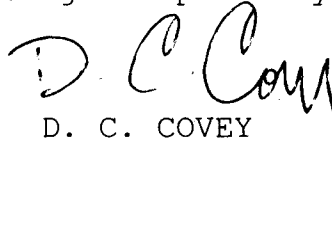
5830
Ser 042/1208
8 Dec 99

FIRST ENDORSEMENT on [REDACTED] Department
Of Orthopaedic Surgery ltr 2 Nov 99

From: Orthopaedic Specialty Leader, Orthopaedic Surgery
Department, Naval Hospital, Bremerton
To: Chairman, Board for Correction of Naval Records,
2 Navy Annex, Washington, DC 20370-5100

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN THE CASE OF
FORMER [REDACTED]

1. Forwarded, concurring with subject specialty review.


D. C. COVEY

DEC 13 1999

02 November 1999

MEMORANDUM

From: [REDACTED], Department of Orthopaedic Surgery, Division of Spine Surgery, Naval Medical Center, Portsmouth, VA 23708
To: [REDACTED] Specialty Advisory for Orthopaedics, [REDACTED]
Code 042, Naval Hospital, Bremerton, Was 98312

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN THE CASE OF FORMER [REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) BCNR File
(2) Service Record
(3) VA Record/Medical Record

1. In response to request for comments and recommendations with regard to the above mentioned subject; I have had an opportunity to review the enclosures listed above. Following are my findings:

A. [REDACTED] undeniably suffered an L4,5 lumbar herniated nucleus pulposus secondary to a motor vehicle accident while on active service with the United States Navy on 9 March 1995. Review of the patient's Health Record revealed that on 10 May 1995 the patient was evaluated at Naval Station Branch Clinic for persistent low back and left lower extremity pain and paresthesias. At that time it was indicated that the patient was being treated by a civilian doctor and a Chiropractor which was covered on his wife's insurance. He was receiving physical therapy and was awaiting a CT scan. It was recommended, at that time, that he continue with his current medications which included Motrin and Vicodin, he was prescribed Valium 5 to 10 mg q.i.d. as needed and was provided with an orthopaedic surgery consult. I am unable to locate any record of an orthopaedic surgery or neurosurgery evaluation during that time in the patient's health record.

B. The next record that is available is a psychiatric evaluation dated 15 April 1996. It was indicated that "the member was not considered to be mentally ill but manifested a long-standing disorder of character and behavior which was of such severity as to render the individual unsuitable for continued military service in the U.S. Navy." The psychiatric evaluation further recommended that he was deemed fit for return to duty for immediate processing for Administrative Separation which should be handled expeditiously. This recommendation was by [REDACTED] Staff Psychologist from the Fleet Mental Health Unit, Branch Medical Clinic, Naval Station San Diego, CA.

C. On 15 May 1997 patient was admitted to the VA Medical Center where he underwent a right L4 hemilaminectomy and L4,5 discectomy for relief of low back and bilateral lower extremity pain. The patient was discharged on 22 May 1997 and was scheduled for follow-up in Neurosurgery Clinic on 2 June 1997 at which time he was also to begin physical therapy. On 4 November 1997 the patient underwent an orthopaedic spine evaluation at the VA Medical Center, St. Louis at which time he complained of persistent low back pain and leg pain postoperatively. It was determined at that time that it was unlikely that the patient was going to be able to return to his prior employment as a boiler technician. It was also noted at that time that the patient's last Neurosurgical consultation was July, 1997 and that he had no future appointments scheduled.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN THE CASE OF
[REDACTED]

2. Lumbar disc herniations are very common injuries in active duty military personnel. In general, the service member is not medically boarded out of the Navy due to this condition. In most instances the condition improves or resolves to the extent that the patient is able to return fit for full duty with either conservative treatment or, at times surgical treatment. There is no documentation in the patients health record that he was being considered for medical separation secondary to his lumbar herniated disc.

3. [REDACTED] memorandum, dated 15 April 1996, clearly stated that the patient's long standing disorder of character and behavior was of such severity as to render the individual unsuitable for continued military service in the U.S. Navy and recommended immediate processing for administrative separation. Therefore, based on my review of the record, it appears that the patient's separation was secondary to his psychiatric evaluation rather than an orthopaedic evaluation for his lumbar spine disorder.

4. Based on the above facts I would have to recommend that the subject's request be denied based on the fact that the available records seem to indicate that he was indeed retired by reason of personality disorder versus physical disability.

A handwritten signature in black ink, appearing to read 'W. Sukovich', with a stylized, sweeping flourish at the end.

WILLIAM SUKOVICH, M.D.
LCDR, MC, USNR